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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/672,304	09/29/2000	Neelakantan Sundaresan	AM9-99-0146	2605

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MCGINN & GIBB, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

EXAMINER

ALAUBAIDI, HAYTHIM J

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/672,304

Applicant(s)

SUNDARESAN, NEELAKANTAN

Examiner

Haythim J. Alaubaidi

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to Applicant's Appeal Brief filed on June 07, 2005.
2. Claims 1-23 are presented for examination following the Appeal Brief.
3. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph
4. Claims 1-23 stands rejected under 35 U.S.C. 103(a).

Re-opening Prosecution

5. While the Examiner conducted an Appeal Conference, an issue regarding New Matter was raised regarding the term "actual time data" mentioned in the independent claims 1, 7, 17 and 23 (please see the 112 rejection set forth below).
6. In view of the Appeal Brief filed on June 07, 2005, PROSECUTION IS HEREBY REOPENED. The Final Office Action set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, Claims 1, 7, 17 and 23 contains the term "actual" that is not in the specification of the current application. The term "actual" was inserted into the claims with the Amendment of June 07, 2004.

Defective Appeal Brief

9. Though the Examiner did not issue a defective appeal brief; the Examiner respectfully would like to bring the applicant's attention to the Consolidated Patent Rules, specifically 37 CFR 41.37 section (c)(1)(v).

§ 41.37 Appeal brief.

(a)(1)Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2)

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1)The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Response to Arguments

In the Appeal Brief

10. Applicant's arguments filed in the Appeal Brief of June 07, 2005 with respect to claims 1-23 have been fully considered but they are not persuasive.

a. Applicant argues that none of the applied references teach or suggest the underlined limitation of "time data that includes an actual time when the second file is scheduled to be updated". The Examiner however respectfully disagrees. This limitation was addressed in the previous Office Actions of March 5, 2004 (non-final), December 08, 2004 (final) and March 28, 2005 (Advisory Action). In addition the Examiner would like to direct the Applicant attention to Yamane's Figure No. 2 where the "actual time" for the next update is clearly indicated, for example, the file or the web page identified by the URL <http://www.a.co.jp> is scheduled to be updated at exactly 12:00 o'clock on July 1st.

b. Applicant also argues that Yamane's update time is a prediction time on oppose to the claimed limitations of the current Application wherein the update

time is "actual". Even though the Examiner pointed out the 112 / 1st paragraph rejection relating to the term "actual" (please see the 112 rejection above); the Examiner will assume for the sake of arguments that the term "actual" was disclosed in the Specification of the current application and therefor provided the following arguments:

The Examiner respectfully would like to bring the Applicants attention to the fact that the actual time indicated in current Application's claimed limitations is also a prediction time, see for example the limitation of claim 1, "actual time when the second file is scheduled to be updated". The reason why the Examiner is interpreting the claims in such a way is due to the following:

- i. According to the specification of the current Application, when a web crawler accesses a CDF (Channel Definition File) of a website, it download or access or get a schedule information relating to when a channel should be updated (Page 2, Lines 9-18). This is one example of a prediction schedule time indicated by a website owner, web master or the web builder (see Page 9, Lines 6-7) and the reason is due to the lack of guarantees and assurance that this future action of updating the web site will actually be fulfilled; for example, the web master may wish to change or actually does change the schedule update time to a different time then what the web crawler already obtained earlier; another example would be a power failure that would prevent the web site from being updated according to the schedule; the specification of the current

application (please see Page 6, Line 14 and Page 9, Line 4) indicate and provide a better evidence that the website may be updated "likely to be updated"; for these reasons alone, the Examiner can read the "actual time" indicated in current Application's claimed limitations as "prediction time"; and

ii. When the system of the current application set a time (based on the predicted time information gathered from the CDF of the web site as indicated above) to update a second file; again the current system is predicting the update of this second file as it is a future update schedule (Page 5, Lines 4-11, i.e. to be updated) and one can not guarantee the fulfillment of such an update for the same reasons indicated in section (i) above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable by Joel A. Ronning (U.S. Patent Application Publication No. 2003/0212992 and Ronning hereinafter) in view of Tetsuya Yamane (U.S. Patent NO. 6,167,436 and Yamane hereinafter).

Regarding Claims 1, 3, 5-8, 10-11, 13, 15-17, 19 and 21-23 Ronning discloses:
accessing a first file on the network from a server to a client (Page 2, Paragraph 0035, i.e. End user machine 201 transmits a request 228 or 229 to server 205 from agent module 203 or page 202, possibly including a request for a particular web page; and see also Page 9, Paragraph 0104, i.e. the server sends to the agent a file information response with recommended updates);

setting an access time to access a second file on said server (Figure No. 15, Element No. 740- 743; see also Figure No. 19)

Ronning's reference discloses all of the claimed subject matter set forth above, except the reference does not explicitly indicate:

- a- accessing time data from within the first file;
- b- t the time data is an actual time for future updates (scheduled updates).

However Yamane's reference teaches:

- a- accessing time data from within the first file¹ (Figure 2, i.e. update time); and
- b- wherein the time data is an actual time for a future update (Figure 2, i.e. next update prediction time).

Ronning, teaches a system that enables an agent to connect to a server to search for file updates; then the server sends to the agent or the agent downloads the file update from the server (limitation one of claim one). All this is being done based on application signatures to identify the files that require update.

Yamane, teaches a system where it predicts a future update including setting an actual time and date of when this update will occur (Col 5, Lines 48-56).

Given the intended broad application of the Ronning system, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Ronning with the teachings of Yamane to have the agent to not only request a web page from the server (Ronning, Page 2, Paragraph 0035), but to also include future recommended updates; as the agent is already accessing the server to search for updates and the server is already comparing the file signatures to see which file needs an update. Including the feature of Yamane for the next prediction update is obvious as one would like to automate the process of having the system to set the time for the next update (Yamane) instead of manually having the user setting it (Ronning, Figure 19); another reason would be to reduce the traffic congestion by minimizing the number of times the agent have to search the server for updates in the Yamane's system.

Regarding Claims 2, 9 and 18, Ronning discloses wherein the second file is the same as the first file (Ronning, Figure No. 15, Element No. 740, i.e. update); and Yamane also discloses wherein the second file is the same as the first file (Figure No. 2, i.e. the link for <http://www.a.co.jp> is being updated).

¹ Please note that the Examiner is interpreting the "file" and the "table" of Figure No. 2 to be the same, as they both are storage units; also because a table can be sent as a file attachment (please see the meaning of "file" in the Microsoft Computer Dictionary, Fifth Edition).

Regarding Claims 4, 12 and 20, Ronning discloses channel definition files (Figure 17 and corresponding text²).

Regarding Claim 14, Ronning discloses accessing time is after the schedule time (Figure 19, and corresponding text).

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

² Please note that according to the specification of pages 1-2 of the current application, a CDF is a file

Points of Contact

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haythim J. Alaubaidi whose telephone number is (571) 272-4014. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (571) 272-4023.

Any response to this office action should be mailed to:

The Commissioner of Patents and Trademarks, Washington, D.C. 20231 or Faxed at our central fax number (571) 273-8300.

Hand-delivered responses should be brought to the Customer Service Window of the Randolph Building at 401 Dulany Street, Alexandria, VA 22314

Haythim J. Alaubaidi

Patent Examiner
Technology Center 2100
Art Unite 2161


SAFET METJAHIC
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

that contains tags, like for example last modified (Fig 17, Element 772), schedule (Fig 17, Element 756; see also Fig 19) and channel item (Fig 17, Element 766, i.e. Product Name).